

EXECUTIVE OFFICER SUMMARY REPORT  
June 12, 2002

ITEM: 11

SUBJECT: Section 401 Water Quality Certification: County of Orange, Rancho Potrero Leadership Academy, Access Road and Stream Crossing, Orange County (tentative Resolution No. R9-2002-0146) (Jeremy Haas)

PURPOSE: To issue a 401 Water Quality Certification for the construction of 2.7 mile long access road and facilities for a five acre youth residential custodial program for the County of Orange Probation Department (e.g., administration and dormitory buildings, parking lot, outdoor recreation facilities, etc.) in the unincorporated Trabuco Canyon area of the County of Orange.

PUBLIC NOTICE: The California Code of Regulations, Section 3858(a) requires a public notice of an application for Section 401 certification at least twenty-one (21) days before taking action on the application. The notice for this project was posted on the Regional Board web site on December 24, 2001.

DISCUSSION: The County of Orange submitted an application for 401 Water Quality Certification for the proposed project on December 14, 2001. Section 401 of the Clean Water Act requires that any person applying for a federal permit or license which may result in a discharge of pollutants into waters of the United States, must obtain a state water quality certification that the activity complies with all applicable water quality standards, limitations, and restrictions. No license or permit may be issued by a federal agency until certification required by Section 401 has been granted. Further, no license or permit may be issued if certification has been denied.

Typically, actions on Section 401 certifications are taken by the Executive Officer. In this case, however, a number of local residents and environmental groups have expressed opposition to the Rancho Potrero Leadership Academy proposal. Consequently, the project is being presented to the Board to allow persons an opportunity to present their comments on this matter.

The proposed project will impact three-quarters (0.74) of an acre of jurisdictional waters of the U.S. The County has proposed to offset this impact through on-site preservation of 0.5 acres of jurisdictional waters of the U.S. and off-site enhancement of 1.47 acre of wetland habitats (*Arundo donax* eradication) in a nearby regional park. Staff's assessment contained in the Attachment No. 3 concluded that these measures combined with Best Management Practices required to be implemented pursuant to the construction and municipal storm water permits will mitigate the potential water quality impacts from this project.

The Regional Board has received public comment letters asking for a postponement of this item to allow additional time for public review of technical material that were submitted by the applicant to our office as late as May 29, 2002. The County is opposed to a postponement because of a State deadline to obtain grant funding.

As noted above, staff supports the issuance of the technically-conditioned water quality certification contained in Attachment No. 2. If the Regional Board concludes that further public review is necessary, the Regional Board could direct the Executive Officer to extend the public review period before issuing the technically-conditioned 401 certification, unless substantial new issues are raised.

LEGAL CONCERNS:

A lawsuit was filed on January 10, 2002, by the Saddleback Canyons Conservancy and Rural Canyons Conservation Fund versus County of Orange, challenging the adequacy of the EIR. This complaint was amended May 1, 2002 to include causes of action related to unpermitted grading and clearing undertaken by the County at the adjacent Joplin Youth Center in April 2002.

SUPPORTING  
DOCUMENTS:

1. Regional Board Tentative Resolution No. 2002-146
2. Technically-conditioned 401 Water Quality Certification
3. Staff Report

RECOMMENDATION(S):

A staff recommendation will be made after receiving public testimony.